

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53045; File No. SR-PCX-2005-132)

December 30, 2005

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Obligations of Lead Market Makers

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 30, 2005, the Pacific Exchange, Inc. (“Exchange” or “PCX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposed rule change as a “non-controversial” rule change under Rule 19b-4(f)(6) under the Act,<sup>3</sup> which rendered the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to delete PCX Rule 6.82(c)(15) in its entirety. The Exchange also proposes to amend Commentary .02 to PCX Rule 6.82. The text of the proposed rule change is available on PCX’s Web site, <http://www.pacificex.com>, at PCX’s Office of the Secretary, and at the Commission’s Public Reference Section.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to delete PCX Rule 6.82(c)(15), a sub-paragraph of Obligations of Lead Market Makers. Along with the deletion of PCX Rule 6.82(c)(15), the PCX proposes to amend Commentary .02 to PCX Rule 6.82, which addresses PCX Rule 6.82(c)(15). This rule, dealing with the handling of public customer orders that are not automatically executed on the PCX because there is a better-displayed bid or offer on another exchange, is scheduled to be operative on January 1, 2006.

Under PCX Rule 6.82(c)(15), when a public customer order is not automatically executed on the PCX due to a better bid or ask price being displayed on another exchange, a Lead Market Maker ("LMM") is obligated, as soon as practical, to address the order by either executing the public customer order at a price that matches the best available price displayed at any other exchange or by routing the public customer order via intermarket linkage ("Linkage") for execution at any other exchange displaying the best price in the market at the time. Outbound Linkage orders on the PCX are still handled via manual interaction with the Linkage system. Manual interaction with the Linkage system can be a time consuming process that potentially could result in the delay of a public customer order being executed at a better price available at a competing exchange. By deleting PCX Rule 6.82(c)(15), in the event that an LMM does not execute the order at the better price displayed on another exchange, the LMM would not be required to send the order to the competing exchange via Linkage. Public customer orders that

are not executed on the PCX could still be rejected to the initiating brokerage firm for rerouting to a competing exchange.

Due to delays in technology development, the PCX has not been able to implement an automated outbound Linkage function into the PCX Plus trading system. The PCX is presently developing a new enhanced options trading system, called the OX System. Included in the design plans for the OX System is functionality that will route outbound Linkage orders to other exchanges via an automated process.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>4</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>5</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

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<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(5).

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>7</sup>

The Exchange has requested that the Commission waive the 30-day operative delay period for “non-controversial” proposals and make the proposed rule change effective and operative upon filing. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest, because PCX Rule 6.82(c)(15) has never become operative (as its operative date was January 1, 2006), and deleting a rule that has never become operative has no real effect and thus raises no issues of regulatory concern. For this reason, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>8</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

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<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

<sup>8</sup> For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule’s impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-PCX-2005-132 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-PCX-2005-132. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from

submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-PCX-2005-132 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

Jonathan G. Katz  
Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).